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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

YWS Architects, LLC, d/b/a YWS Design & Architecture, a Nevada limited liability company,

Plaintiff,

v.

ALON LAS VEGAS RESORT, LLC, a Delaware limited liability company, ALON LAS VEGAS LANDCO, LLC, a Delaware limited liability company; TISHMAR, LLC, a Nevada limited liability company;

Defendants.

Case No.:

COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, AND LIEN FORECLOSURE

(1) Copyright Infringement
(2) Unfair Competition
(3) Deceptive Trade Practices Pursuant to NRS 598.0903 et seq.
(4) Breach of Contract
(5) Breach of the Implied Covenant of Good Faith and Fair Dealing
(6) Intentional Misrepresentation
(7) Unjust Enrichment
(8) Mechanics' Lien Foreclosure

For its complaint against Defendant Alon Las Vegas Resort, LLC ("Alon Resort"), Alon Las Vegas Landco, LLC ("Alon Landco"), and Tishmar, LLC ("Tishmar"), (collectively, "Defendants"), Plaintiff, YWS Architects, LLC, d/b/a YWS Design & Architecture ("Plaintiff" or "YWS") complains and alleges as follows:

NATURE OF ACTION

This is an action for copyright infringement and unfair competition under federal statutes, with pendent claims for deceptive trade practices, breach of contract, breach of the implied covenant of good faith and fair dealing, intentional misrepresentation, unjust enrichment, and mechanic's lien foreclosure. YWS seeks damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

JURISDICTION

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§1331 and 1338(a) and (b). This Court has supplemental jurisdiction over YWS' state law claims pursuant to 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over Alon Landco based on that entity's significant business activities in the state of Nevada in connection with the design and development of the ālon resort hotel property located on the Las Vegas Strip, and pursuant to the terms of the written agreement entered into between the parties as referenced herein.

3. This Court has personal jurisdiction over Alon Resort based on that entity's significant business activities in the state of Nevada in connection with the design and development of the ālon resort hotel property located on the Las Vegas Strip and because this entity owns a portion of the Nevada property at issue in this litigation.

4. This Court has personal jurisdiction over Tishmar because this entity owns a portion of the Nevada property at issue in this litigation, and because it is a Nevada limited liability company.

5. Venue is proper in the United States District Court for the District of Nevada under 28 U.S.C. § 1391(b) and (c). Venue lies in the unofficial Southern Division of this Court.

PARTIES

6. Plaintiff YWS is and was at all times relevant herein a Nevada limited liability company. YWS is a premiere designer for leisure and resort experience in Las Vegas and around the world. Through its team of top tier designers, architects, and coordinators, YWS has provided architectural design services for clients such as TopGolf, Hakkasan, MGM Macau and Crown Perth.

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At all times herein, YWS and relevant YWS personnel were duly registered under NRS Chapter 623 to provide architectural services.

7. Alon Landco is a Delaware limited liability company and the developer of the ālon resort hotel property (the "Project").

8. Alon Resort is a Delaware limited liability company and the owner of that certain Nevada property described in paragraph 10 of this Complaint.

9. Tishmar is a Nevada limited liability company and the owner of that certain Nevada property described in paragraph 10 of this Complaint.

THE PROPERTY

10. The Project is to be built on real property owned by Alon Resort at 3120 South Las Vegas Boulevard, Las Vegas, Nevada with Clark County Assessor Parcel Numbers of 162-16-101-009 and 162-16-101-011 (the "Alon Resort Property") and real property owned by Tishmar at 3120 South Las Vegas Boulevard, Las Vegas, Nevada with Clark County Assessor Parcel Number of 162-09-403-004 (the "Tishmar Property") (collectively the Alon Resort Property and Tishmar Property are referred to as the "Property"), as further described in **Exhibit 1** attached hereto.

ALLEGATIONS COMMON TO ALL COUNTS

A. The Parties' Written Agreement

11. In April 2015, Alon Landco began negotiations with YWS to become the architect of record for the ālon Project on behalf of, with the knowledge of, and with the approval of Alon Resort and Tishmar.

12. The Parties memorialized their mutual intent to enter into a contract through a series emails with Alon Landco's Executive Vice President.

13. YWS and Alon Landco reached agreement on all material terms on April 16, 2015.

14. A critical element of the negotiations was the manner of billing for labor, other costs and profit. Alon Landco insisted that direct labor be billed at Actual Cost, but agreed that Direct Costs, G&A Costs and Profit would be billed using a traditional fixed fee process.

15. On May 25, 2015, YWS and Alon Landco, through its duly authorized agent, non-party Alon Leisure Management, LLC, executed a Letter of Intent (the "Contract") with an effective

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date of May 5, 2015.

16. The Contract sets forth the express terms for fee, scope of work, ownership of intellectual property, and schedule along with certain other terms.

The Fees

17. The Contract included a table of fees for each type of service ("Fee Structure").

Item	**Value**	**Comments**
Labor Cost (budget)	$12,000,000	See attached Exhibit B for labor resource chart associated with the estimated labor costs upon which invoices shall be based. ALON [Landco] shall reimburse actual and documented labor costs. Unexpended labor budget at project completion shall be deducted from the final contract value.
Direct Costs (fixed)	$2,5000,000	Includes office supplies, internal related travel expenses, renderings/presentations, telephone, freight, legal services, computer systems, software, & trainings costs.
G&A Costs (fixed)	$3,000,000	Includes marketing, business development, corporate overhead labor, insurance, tax, license, utilities, & office rent costs.
Profit (fixed)	$3,875,000	
Incentive Payment (fixed)	$525,000	To be paid upon successful completion of the project and provided final labor cost of $12,000,000 has not been exceeded.
Total Fee Value	$21,900,000	USD

18. The Contract provided a spreadsheet that YWS used to calculate both the labor rate and the burden portion of each labor billing ("Labor Cost Breakdown Spreadsheet").

19. The Contract provided for a hybrid fee obligation as contemplated during the negotiations, whereby labor was to be billed at actual cost, while direct costs, G&A costs, and profit were fixed (hereinafter "Hybrid Fee Structure").

20. In addition to providing the fee amounts, the Contract stated that the Fee would be billed in bi-monthly invoices and paid within 30 days.

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The Schedule

21. The Contract listed the expected schedule ("Schedule Milestones") as follows:

May 2015	Submit Entitlement Package to CCBD.
November 2015	Secure all required land use/planning permits.
December 2015	Break ground, commence construction activities.
March 2016	Commence concrete foundations installations.
March 2017	Construction Documentation complete.
August 2018	Project completion/Opening.

The Scope

22. The Contract further provided that YWS was responsible for the following general tasks: assist in the Master Plan Development Design, develop permit packages (if required) for the development of certain Mock-Ups, serve as the Architect of Record, performing Design Documentation & Coordination, and Construction Phase Services ("Scope of Work").

The Obligation to Work Towards a Definitive Agreement

23. Although the Contract permitted termination, the Contract obligated the parties to work towards a "Definitive Agreement:"

> **[D]iligently work towards drafting and executing a Definitive Agreement that captures the scope and terms as outlined in this LOI.** The Definitive Agreement will include other provisions, including without limitation, those addressing indemnification, termination, limit of liability, right to defend, and dispute resolution, [sic] insurance coverages all of which are to be mutually agreed upon by the parties. It is understood that in resolving the Definitive Agreement some of the terms and conditions of this LOI may be refined, revised, or eliminated. With that said, **both parties will work to preserve the spirit and intended scope of the proposed relationship.** Upon the mutual execution of a Definitive Agreement, this LOI shall terminate and the Definitive Agreement shall

> govern the relationship of the parties with respect to the project. (Emphasis added).

The Intellectual Property

24. The Contract provides in relevant part that

> YWS and YWS's consultants shall be deemed the authors and owners of their respective works, including drawings and specifications and any deliverables (collectively, the "Instruments of Service"), and shall retain all common law, statutory and other reserved rights, including copyrights. …Effective contemporaneously upon payment by ALON of fees for YWS services YWS grants to ALON a nonexclusive, perpetual, fully paid-up license to use the Instruments of Service created by YWS in furtherance of this LOI and prior to entering into the Definitive Agreement solely for the purpose of constructing, using, maintaining, altering, and adding to the Project...

25. The Contract further provides that if Alon Landco decides to complete the Project through the use of another design professional, it may only use the Instruments of Service if it has paid YWS in full:

> Should ALON and YWS fail to execute a Definitive Agreement or otherwise terminate this LOI, and ALON wishes to use the Instruments of Service prepared by YWS under this LOI, YWS shall not be held responsible for the accuracy, completeness or constructability of the Instruments of Service prepared by YWS as used, changed or completed by ALON or by another party. Furthermore, if ALON decides to complete this Project through the use of another design professional **and has paid YWS in full**, ALON may use the Instruments of Service under [certain conditions].

26. Alon Landco "acknowledge[d] its obligations under the LOI regarding the use of the Instruments of Service following termination of the LOI" in a letter dated August 24, 2016.

B. The Subsequent Dealings Between The Parties

27. YWS issued a design schedule to Alon Landco on April 24, 2015.

28. The schedule included the ālon Project milestones set forth in the Contract and further detailed the specific tasks that YWS would complete during the ālon Project ("Design Schedule").

29. Although Alon Landco made minor modifications to the Design Schedule to allow certain owner-related tasks to be tracked along with YWS tasks, YWS maintained the Design Schedule and reviewed it regularly with Alon Landco.

30. On June 4, 2015, YWS issued a fee draw schedule to Alon Landco to assist Alon Landco with cash management ("Fee Draw Schedule").

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31. The Fee Draw Schedule provided a more detailed expression of the costs associated with gearing up a large-scale project, the timing of the issuance of key design deliverables during the scheduled run of the project, and the level of executive management and involvement required early in the project.

32. The Fee Draw Schedule was regularly reviewed by the Parties and was included with each progress billing.

33. YWS invoiced per the Fee Draw Schedule, with various immaterial adjustments, until June 2016.

C. Variations in the Scope of Work

34. Shortly after the Project started, Alon Landco requested YWS to perform additional work beyond the original scope. YWS agreed that variations would be limited to (1) a material scope increase, (2) Owner-directed design changes that warranted a material re-design, and (3) a change to the date of Construction Documentation completion. To the extent that changes to the original scope of work did not increase the Design Schedule, the amount of overhead and profit would also not change; however new scopes of work (as well as schedule extensions) would include additional overhead and profit.

35. In November of 2015, changes to the agreed-upon scope of services and schedule were to be material enough to warrant a variation request (additional services request or change order request).

36. On December 31, 2015, YWS outlined the changes to the Project in YWS' Variations #1 and #2.

37. Variation #1 involved changes to the Nevada Modified Commerce Tax, which impacted the above-referenced labor worksheet and were accepted by Alon Landco without issue.

38. The Variation #2 request resulted from Alon Landco's continued expansion in YWS' scope of work and extension of the Design Schedule, which resulted in increased overhead and profit by approximately $2 million based on the Contract methodology.

39. At the time of the Variation #2, the growth of the scope of work had extended the Design Schedule by 13 weeks, which eventually grew to 42 weeks.

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40. Alon Landco acknowledged receipt of the Variations (as well as a contract mark-up) in an email of January 27, 2016, stating that there was no "more budget allocation for YWS' design services from what is identified in your agreement."

41. Alon Landco also discussed the Variations and other contractual matters in an email exchange of March 7, 2016.

42. Meanwhile, YWS continued to provide services per the terms of the Contract and the Fee Draw Schedule in good faith and in anticipation of resolving the Variations in a Definitive Agreement.

D. The Failure to Work Diligently Toward a Definitive Agreement

43. On January 27, 2016, YWS emphasized the need to move towards a Definitive Agreement as required by the Contract, including a mark-up of version 7 of the Parties' draft Definitive Agreement and requested an in-person meeting in February to finalize the Definitive Agreement.

44. On March 4, 2016, YWS reiterated the desire to move negotiations for the Definitive Agreement forward, and described the risks in extending schedules.

45. On March 7, 2016, Alon Landco responded and focused on the variation requests YWS had made back in December 2015, and how to handle variations in the future.

46. Ultimately, Alon Landco's refusal to move forward with the Definitive Agreement frustrated YWS' diligent attempts to finalize the Definitive Agreement.

E. Alon Landco's Financial Struggles

47. Alon Landco paid according to the Contract for nearly a year.

48. In late February, 2016, Alon Landco began to fall behind on payments due to YWS.

49. In April 2016, YWS inquired into the unpaid bi-monthly invoices.

50. At the time of YWS' April 2016 inquiry, Alon Landco raised no complaints or concerns about YWS' work.

51. Instead, Alon Landco suggested that it would pay the past due invoices in installment payments over several months in addition to the regular bi-monthly billing because of available financing.

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52. Soon thereafter, however, Alon Landco began paying only labor costs and failed to follow through on its promises to catch up on past due payments.

53. Between February and mid-May 2016, Alon Landco failed to pay approximately $1.1 million of overhead and profit to YWS per the Contract.

54. In mid-May 2016, Alon Landco changed positions, informing YWS that it could no longer afford to pay any more overhead and profit since Alon Landco needed to save the costs for a “replacement architect” if an agreement could not be reached.

55. In a May 25, 2016 email, Alon Landco attempted to change the nature of its fee obligations by converting it to a “cost plus” model by decoupling the fixed fee process for overhead and profit from the Fee Draw Schedule for the purpose of tying “Fixed Costs” to “labor expended.”

56. The May 25, 2016, email also stated Alon Landco’s “intention to withhold further payment for fixed costs until such time that the extent of labor expended on the project is commensurate with the amount of fixed costs already paid to date.”

57. Essentially, Alon Landco took the unfounded position that, as a result of this unilateral change in the interpretation of the fee obligation, YWS has been overpaid by approximately 20 percent.

58. To exacerbate the problem, Alon Landco proposed an arbitrary and indefinite completion schedule.

59. Although YWS attempted to engage in conversations to address and resolve concerns while promising that work would continue per the terms of the Contract in good faith, the situation worsened.

F. Alon Landco’s Notice to YWS to Temporarily Suspend Design Activities

60. On June 15, 2016, Alon Landco issued a “Notice,” which temporarily suspended design activities related to the ālon Project for a period of eight to twelve weeks effective June 1, 2016 (“Special Period”).

61. In the Notice, Alon Landco acknowledged that “it has become apparent that this [financing] process will take more time to conclude,” so it will be “focusing our resources on those aspects of the project that are critical to our targeted ground-breaking in November 2016.”

62. The Notice directed YWS to "suspend all work related to all areas of the project" except to:

> Review and coordinate the details of design team Basis of Design documents with Penta Building Group and ālon as they relate to the Guaranteed Maximum Price (GMP) Agreement for the Project.
>
> Finalize and issue GMP Masterplans and associated Area Tabulations.
>
> Progress the detailing of podium facades for the purposes of finalizing the facade GMP design premises.
>
> Assist ALON [Landco] advance alternate Masterplan schemes for the development while assessing opportunities to increase program efficiency.

63. The Notice further instructed YWS to:

> Confirm that all invoices submitted to ALON [Landco] through May 31, 2016 reflect the actual and total amount due for work performed through May 31, 2016.
>
> Confirm that YWS has the capacity and intention to re-engage with ALON at the conclusion of the suspension period to complete its current scope of work for the project in accordance with the updated design schedule.
>
> Provide a proposal outlining any impact the design suspension has on agreed upon design fees for the project.

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64. The Notice was clear that suspension of the ālon Project and failure to fulfill its fee obligations was initially driven by Alon Landco's struggles, unrelated to any performance issues with YWS.

65. YWS responded to the Notice on June 20, 2016, wherein it agreed to continue the work requested in the Notice through the Special Period, but stipulated it was reserving all rights under the Contract, including but not limited to recovery of all monies owed.

66. During the Special Period, Alon Landco asked YWS to submit a strawman proposal outlining how YWS would deliver the project once it restarted. YWS delivered such a proposal, with a proposed schedule that permitted the ālon Project to open nine weeks ahead of the then-planned opening date.

67. Alon Landco rejected the proposal, stating that they did not believe they could move any faster than they had already planned. On information and belief, Alon Landco then shopped this proposal to other architects in an attempt to find someone to complete the project for less money.

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G. Termination of the Contract

68. On August 24, 2016, at the end of the Special Period, Alon Landco terminated the Contract.

69. Alon Landco further represented that it would not pay the labor costs for work performed during the Special Period.

70. Alon Landco also demanded payment from YWS in the amount of $496,792.58 and the return of Alon Landco property no later than August 31, 2016.

71. In coordination with termination, YWS provided Alon Landco with a package of intellectual property as well as final billings to close out the project on August 31, 2016.

72. The final billings coordinated outstanding fees associated with the Fee Draw Schedule, labor charges at Actual Cost, a credit to zero-out labor burden accruals, and certain other items related to the project, which had been agreed upon by both parties.

73. As of August 31, 2016, YWS was still owed $3,428,143.71 for unpaid invoices.

74. YWS continues to owe significant amounts to vendors, who are also being impacted by the non-payment of YWS' invoices.

75. Alon Landco has hired former YWS designers (who are not licensed architects) who had contributed work to the ālon Project.

76. YWS recently learned that Alon Landco has removed YWS's name from the Instruments of Service, and is currently soliciting bids from architects and general contractors to both finish YWS's design and begin construction.

H. Use of YWS' Work Without Authorization or Indicia of Origin

77. On September 1, 2016, YWS obtained a U.S. Copyright Registration, No. VAu001253918 for its architectural design and development plans relating to the Project (the "Copyrighted Work" aka the "Instruments of Service"). A true and correct copy of YWS' U.S. Copyright Registration is attached hereto as **Exhibit 2**.

78. Upon information and belief, Alon Landco has continued to utilize the Copyrighted Work to continue to develop the Project. However, because Alon Landco has not paid YWS for its services pursuant to the terms of the Contract and subsequent change requests, Alon Landco is not

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entitled to use the Copyrighted Work. Accordingly, Alon Landco's continued use of the Copyrighted Work constitutes copyright infringement under 17 U.S.C. § 501.

79. Upon information and belief, Alon Landco's infringing activities include making unauthorized copies of the Copyrighted Work, making unauthorized modifications to the Copyrighted Work, public display of the Copyrighted Work, and distribution of the Copyrighted Work to third parties in connection with the further design and development of the Project.

80. Upon information and belief, Alon Landco has removed information that would indicate origin of the Instruments of Service when showing them to others.

81. Even after contacting Alon Landco to inform it of its infringing and unlawful activities, upon information and belief, Alon Landco has continued its unlawful activities in this regard.

I. The Initial Mechanics' Lien

82. On September 19, 2016, YWS recorded a lien against the Property associated with the ālon Project to secure its rights in the event of non-payment.

83. The lien was for the sum of $3,428,143.71, plus interest, costs, and attorneys' fees still due and owing to YWS for the labor, materials, and general architecture services.

84. YWS reiterated its request to engage in mediation pursuant to the Contract, but set a deadline in an attempt to progress the matter.

85. On October 6, 2016, Alon Landco demanded that the lien be released by close of business on Friday, October 7, 2016, so that the parties could "attend mediation in good faith." In the same letter, sent by Alon Landco's counsel, Alon Landco claimed its intent to use the Instruments of Service after it obtains a different architect of record.

86. On October 7, 2016, YWS released the lien (without satisfaction of the underlying debt and without prejudice to a future lien) as requested to facilitate good faith mediation.

J. The Mediation and Current Mechanic's Lien

87. As required by the Contract, a mediation was held on November 17, 2016, with mediator Floyd A. Hale, Esq.

88. The mediation was unsuccessful.

89. On November 21, 2016, YWS again recorded its lien against the Property in the amount of $3,428,143.71.

90. The Notice of Lien filed with the Office of the Clark County Recorder on November 21, 2016 is Book 20161121, Instrument 0001754 and was timely served upon the Defendants.

FIRST CLAIM FOR RELIEF

(Copyright Infringement Under 17 U.S.C. § 501)

91. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

92. YWS owns the copyright in and to the Copyrighted Work.

93. The Copyrighted Work constitutes copyrightable subject matter, as it is a work within the meaning of Section 102(a) of the Copyright Act of 1976 ("The Copyright Act").

94. The Copyrighted Work is an original work of authorship fixed in a tangible medium of expression from which it can be perceived. YWS has taken all reasonable steps necessary to secure its copyright, including obtaining a U.S. Copyright Registration for the Copyrighted Work, Registration No. VAu001253918.

95. YWS owns a valid copyright registration in the Copyrighted Work and is the owner of all rights, title, and interest in and to said work, and owns all rights, title, and interest to the registered copyright of the Copyrighted Work, and has done nothing to abandon the Copyrighted Work or place it into the public domain.

96. Upon information and belief, and without the knowledge, approval, or consent of YWS, Alon Landco, which had access to the Copyrighted Work as a result of its relationship with YWS, willfully infringed YWS' copyright and continues to do so by reproducing, copying, duplicating, displaying, distributing, altering, and otherwise using YWS' copyrighted work for Alon Landco's own commercial purposes, including soliciting bids from architects and general contractors to both finish YWS's design and begin construction.

97. Alon Landco's unlawful activities violate YWS' exclusive rights under the Copyright Act and constitute willful and intentional infringement.

98. Such infringement has caused harm, and continues to cause harm to YWS.

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99. Alon Landco has realized unjust profits, gains, and/or advantages as a proximate result of its infringement.

100. As a direct and proximate result of Alon Landco's copyright infringement, YWS has suffered monetary damages and irreparable injury to its business, reputation, and goodwill.

101. YWS has complied in all respects with the statutory requirements for the creation and enforcement of its copyright in the Copyrighted Work; therefore, YWS is entitled to an award of statutory damages for Alon Landco's infringement, or, in the alternative, YWS' actual damages and Alon Landco's profits.

102. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

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SECOND CLAIM FOR RELIEF
(Unfair Competition Pursuant to 15 U.S.C. 1125(a))

103. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

104. Upon information and belief, Alon Landco has removed YWS' information from the Instruments of Service and represented the Instruments of Service as its own when dealing with third parties. This amounts to a false designation of origin, false or misleading description of fact, and/or false or misleading representation of fact, which is likely to cause confusion, mistake, or to deceive as to the origin of the Instruments of Service.

105. Alon Landco's use in commerce of the Instruments of Service with the knowledge that YWS owns the Instruments of Service constitutes intentional conduct by Alon Landco to make false designations of origin and false descriptions about Alon Landco's goods, services, and commercial activities.

106. As a direct and proximate result of such unfair competition, YWS has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

107. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

THIRD CLAIM FOR RELIEF
(Deceptive Trade Practices under N.R.S. 598.0903, et seq.)

108. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

109. Upon information and belief, Alon Landco has removed YWS' information from the Instruments of Service and represented the Instruments of Service as their own when dealing with third parties. This conduct amounts to a deceptive trade practice in violation of various provisions of NRS 598, including NRS 598.0915, and 598.0923.

110. As a direct and proximate result of such deceptive trade practices, YWS has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill, and is entitled to damages pursuant to NRS 41.600, including attorneys' fees and costs, and NRS .

111. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

FOURTH CLAIM FOR RELIEF
(Breach of Contract)

112. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

113. The Contract constitutes a valid and enforceable agreement between the parties.

114. Alon Landco breached its obligations to YWS under the Contract by failing to pay for work that YWS had performed as delineated by the Contract, failing to compensate YWS for the additional work Alon Landco requested that was outside the scope of the original Contract, failing to work diligently towards the finalization of a Definitive Agreement, failing to adhere to the Schedule Milestones of the Contract without agreed-upon additional compensation, removing YWS's name from the Instruments of Service, and distributing same prior to fulfilling its payment obligations.

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115. YWS provided written notice of Alon Landco's material breaches, through its continual correspondence to Alon Landco and its counsel.

116. YWS performed all of its obligations under the Contract by providing the architectural design services set forth in the Contract and subsequent variation requests.

117. As a result of Alon Landco's material breaches, YWS has been damaged in an amount to be determined at trial.

118. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

FIFTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

119. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

120. The Contract contains an implied covenant of good faith and fair dealing, requiring Alon Landco to deal with YWS in good faith.

121. Alon Landco breached its duty of good faith and fair dealing when it deliberately failed to perform in a manner that was faithful to the purpose of the Contract, by failing to pay for work that YWS had performed as delineated by the Contract, failing to compensate YWS for the additional work it requested that was outside the scope of the original contract, failing to work diligently towards the finalization of a Definitive Agreement, removing YWS's name from the Instruments of Service and distributing same prior to fulfilling its payment obligations, and attempting to unilaterally change the terms of payment to decrease the amount Alon Landco was obligated to pay.

122. Alon Landco's actions were deliberately designed to countervene the intention and the spirit of the Contract.

123. As a direct and proximate cause of Alon Landco's breach, YWS's justified expectations were denied.

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124. As a direct and proximate cause of Alon Landco's actions, YWS has sustained damages in an amount to be determined at trial.

125. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

SIXTH CLAIM FOR RELIEF

(Intentional Misrepresentation)

126. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

127. During the course of the parties' business relationship, Alon Landco made false representations, knowing that YWS would rely upon them. Specifically, Alon Landco asserted that it would pay YWS for work that went beyond the initial scope of work set forth in the Contract, knowing that it could not or would not pay for the work.

128. By making these representations, Alon Landco intended to induce YWS into performing more services.

129. YWS relied upon these representations and performed the requested services.

130. This reliance was to YWS' detriment, as it was never paid for the services, and justifiable, where Alon Landco had previously paid the bi-monthly invoices pursuant to the Contract.

131. As a result of Alon Landco's misrepresentations regarding payment of YWS' services, YWS has sustained damages in an amount to be determined at trial.

132. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

SEVENTH CLAIM FOR RELIEF

(Unjust enrichment)

133. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

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134. Alon Landco acknowledged that requests for changes in the scope of work that went beyond the original scope set forth in the Contract would incur additional fees and costs.

135. Alon Landco was aware that YWS proceeded with the changes set forth in Variations #1 and #2 and further requested changes, as well as additional requested side projects, with the expectation that it would be paid for those services and fees and costs associated with delay in accordance with the Contract and the parties' communications.

136. Alon Landco failed to pay YWS for the services performed pursuant to change requests, additional projects, and for fees and costs that resulted from further delay, and was thereby unjustly enriched by receiving the benefit of those unpaid services.

137. As a result of Alon Landco's actions, YWS has sustained damages in an amount to be determined at trial.

138. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

EIGHTH CLAIM FOR RELIEF

(Mechanic's Lien Foreclosure Against Defendant Alon Resort and Defendant Tishmar Pursuant to NRS Chapter 108)

139. YWS incorporates the allegations in the preceding paragraphs as if fully set forth herein.

140. Pursuant to the Contract, YWS provided certain labor, materials and general architecture services.

141. YWS's provision of labor, materials and general architecture services was for the benefit and improvement of the Property owned by Alon Resort and Tishmar, and was done at the request and insistence of Alon Landco and with the knowledge and approval of both Alon Resort and Tishmar.

142. After deducting all just credits and offsets, the sum of $3,428,143.71, plus interest, costs, and attorney's fees is still due and owing to YWS for the labor, materials and general architecture services.

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143. Alon Landco has failed to make full payment due and owing to YWS for the labor, materials and general architecture services.

144. In order to secure its claim, YWS has perfected a mechanic's lien in the total amount of $3,428,143.71 against the Property, representing the unpaid amount for labor, materials and general architecture services provided by YWS to benefit the Property, including, without limitation, that work performed pursuant to the Contract.

145. YWS has complied with the statutory procedures set forth in Nev. Rev. Stat § 108.221 by (i) recording a Notice of Lien with the Office of the Clark County Recorder on November 21, 2016 in Book 20161121, Instrument 0001754, which Notice of Lien is incorporated herein by reference; (ii) timely serving copies of the Notice of Lien upon Defendants; and (iii) instituting this action to foreclose upon the mechanic's lien within six months from the recording of the Notice of Lien.

146. Pursuant to the laws of the State of Nevada, particularly Chapter 108 of the Nevada Revised Statutes, YWS is entitled to recover the full amount of the mechanic's lien, plus interest, costs, and reasonable attorneys' fees.

147. Having complied with all relevant statutory provisions, YWS is entitled to (i) foreclosure on its mechanic's lien; (ii) an Order from the Court that the sum of $3,428,143.71, plus interest and attorneys' fees is a lien upon the Property; and (iii) an Order from the Court that the Property shall be sold, as may be necessary, pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of the amounts owed to YWS by Alon Landco.

148. Alon Landco's conduct has made it necessary for YWS to retain counsel to file this suit and otherwise enforce its rights, and as such, YWS is entitled to recover reasonable attorneys' fees and costs incurred in connection herewith.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. A declaration that Alon Landco has infringed YWS' copyright in the Copyrighted Work;

B. A preliminary and permanent injunction prohibiting Alon Landco, its respective

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officers, agents, servants, employees and/or all persons acting in concert or participation with them, or any of them, from utilizing the Instruments of Service in any manner whatsoever;

C. An award of compensatory, consequential, special, statutory, and/or punitive damages to YWS in an amount to be determined at trial;

D. An award of damages pursuant to NRS 41.600, including attorneys' fees and costs;

E. For a judgment declaring that YWS has a valid and enforceable mechanics' lien against the Property, in the amount proven at trial to be due, plus attorneys' fees, costs, and interest;

F. For an adjudication of a lien upon the Property for the amount proven at trial to be due, plus reasonable attorneys' fees, costs, and interest thereon, and that this Court enter an Order that the Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due YWS herein;

F. An award of interest, costs and attorneys' fees incurred by YWS in prosecuting this action; and

G. All other relief to which YWS is entitled.

DATED: this 18th day of May, 2017.

GREENBERG TRAURIG, LLP

/s/ Mark G. Tratos
Mark G. Tratos (Bar No. 1086)
Lisa J. Zastrow (Bar No. 9727)
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Counsel for Plaintiff

Exhibit 1

APN #s 162-16-101-009 & 162-16-101-011

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Parcel 1-A:

That portion of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 9 and that portion of the North Half (N 1/2) of the Northwest Quarter (NW 1/4) of Section 16, Township 21 South, Range 61 East, M.D.M., Clark County, Nevada, described as follows: Parcel One (1) as shown by map thereof in File 112 of Parcel Maps, Page 17, in the Office of the County Recorder of Clark County, Nevada.

Parcel 1-B:

A non-exclusive easement over that portion of the Private Drive (Frontier Drive), lying outside of the boundary of the above mentioned Parcel One (1) for road purposes, etc., as defined in that certain "Easement Agreement" dated January 14, 1981 and recorded January 16, 1981 in Book 1343 as Instrument No. 1302121, and re-recorded January 30, 1981 in Book 1349 as Instrument No. 1308303, and re-recorded February 4, 1981 in Book 1351 as Instrument 1310781, and as partially rescinded by Agreements recorded October 16, 2002 in Book 20021016 as Instrument No. 01975, of Official Records, Clark County, Nevada.

Parcel 1-C:

An easement for encroachments as defined in that certain "Easement Agreement" dated February 1, 1998 and recorded February 2, 1998 in Book 980202 as Instrument No. 00010, and re-recorded February 20,1998 in Book 980220 as Instrument No. 02300, of Official Records, Clark County, Nevada.

Parcel 1-D:

A non-exclusive easement to construct, install, maintain and repair water and sewer utilities and appurtenances related thereto as set forth in that certain "Utility Easement Agreement", recorded October 20, 2005 in Book 20051020 as Instrument No. 0001410, of Official Records, Clark County, Nevada.

Parcel 1-E:

A non-exclusive easement for Ingress and Egress as defined in that certain "Easement Agreement" dated July 2005, and recorded July 13,2005 as instrument 0004435 in Book 20050713 Official Records.

Assessor's Parcel No.: 162-16-101-009 & 162-16-101-011

APN# 162-09-403-004

LEGAL DESCRIPTION

A PORTION OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 9, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., CLARK COUNTY NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 9;
THENCE SOUTH 89°24'18" WEST ALONG THE SOUTH LINE OF SECTION 8, TOWNSHIP 21 SOUTH, RANGE 61 EAST, M.D.M., 234.41 FEET; THENCE NORTH 27°59'19" EAST ALONG A LINE PARALELL WITH AND 40 FEET SOUTHEASTERLY FROM THE CENTERLINE OF INDUSTRIAL ROAD, 539.78 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING NORTH 27°59'19" EAST ALONG SAID LINE, 181.73 FEET;
THENCE SOUTH 88°42'24" EAST ALONG A LINE BEING PARALELL WITH AND 20.00 FEET SOUTH FROM THE NORTH LINE OF THE SOUTH HALF (S1/2) OF THE SOUTH HALF (S1/2) OF THE SOUTHWEST QUARTER (SW1/4) OF SAID
SECTION 9, A DISTANCE OF 2,179.11 FEET TO THE POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 91;
THENCE SOUTH 28°00'00" WEST ALONG SAID RIGHT-OF-WAY LINE, 638.15 FEET;
THENCE DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 62°00'00" WEST 299.99 FEET;
THENCE SOUTH 87°22'49" WEST, 1,026.76 FEET;
THENCE NORTH 61°59'48" WEST, 763.01 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND CONVEYED TO THE COUNTY OF CLARK FOR STARDUST ROAD IN DEED RECORDED JULY 23, 1993 IN BOOK 930723 AS DOCUMENT NO. 01320 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PORTION OF SAID LAND AT THE CORNER OF STARDUST ROAD AND INDUSTRIAL ROAD CONVEYED TO THE COUNTY OF CLARK IN DEED RECORDED JANUARY 27, 1994 IN BOOK 940127 AS DOCUMENT NO. 00427 OF OFFICIAL RECORDS.

Exhibit 2

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

United States Register of Copyrights and Director

Registration Number

VAu 1-253-918

Effective Date of Registration:
September 01, 2016

Title

Title of Work: Alon Development Project

Content Title: Architectural Sheet Title # P-A.2.B1, Overall Floor Plan, Level B1

Architectural Sheet Title # P-A.2.00, Overall Floor Plan, Level 00

Architectural Sheet Title # P-A.2.01, Overall Floor Plan, Level 01

Architectural Sheet Title # P-A.2.02, Overall Floor Plan, Level 02

Architectural Sheet Title # P-A.2.03, Overall Floor Plan, Level 03

Architectural Sheet Title # P-A.2.04, Overall Floor Plan, Level 04

Architectural Sheet Title # P-A.2.05, Overall Floor Plan, Level 05

Architectural Sheet Title # P-A.2.06a, Overall Floor Plan, Level 06

Architectural Sheet Title # P-A.2.06, Overall Plans Parking

Architectural Sheet Title # T-A.2.07, Resort Tower Plans

Architectural Sheet Title # T-A.2.08, VIP Tower Plans

Completion/Publication

Year of Completion: 2016

Author

- **Author:** YWS Architects, LLC
  Pseudonym: YWS Design & Architecture
  Author Created: architectural work
  Work made for hire: Yes
  Citizen of: United States
  Domiciled in: United States

Copyright Claimant

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Rights and Permissions

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Certification

Name: Thomas A. Wucherer
Date: September 01, 2016
Applicant's Tracking Number: Alon

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